

Summer 2022 edition of the AFA Cymru Legal Bulletin

Welcome to the Summer edition of the AFA legal Bulletin where we aim to provide Welsh specific legal advice and information.

All Wales Special Guardianship support plan

The plan is now available in both English and Welsh and can be found embedded in the attached document. A great many local authorities have decided to adopt the plan as it is. Should you decide as a local authority that you need a different format, it may be useful to reference at the top of your plan that you have taken into consideration all of the aspects of the WG/AFA plan.

Recent case law

There has been very little public child care law recently, but this case is a reminder of the right way to approach the welfare analysis at the end of care proceedings.

B (A Child) (Adequacy of Reasons) [2022] EWCA Civ 407

saw the President, Sir Andrew McFarlane, with two other judges in the Court of Appeal, look at the case of an 18 month old boy. The judge at the final care and placement hearing stage was severely criticised for being linear in his dealing with the child's realistic options, rather than undertaking a proper welfare analysis of all the options:

'The judge considered the options in water-tight compartments, with parental placement being ruled out before the prospect of adoption had begun to be considered, so that, at no point, did the judge balance and weigh up the one route for the child's future against the other.'

This child had only two realistic options – reunification with parents and adoption. The judge looked at the prospect of reunification with reference to the Children Act 1989 principles and welfare checklist, rejected that prospect and then went onto looking at adoption, using the Adoption and Children Act 2002 principles and welfare checklist.

The differences in the two sections are as follows:

- In the ACA the 'paramountcy principle' is extended to include the child's welfare '*throughout his life*'.

- In the welfare checklist itself there are additional factors that the court or adoption agency must consider:

(4) The court or adoption agency must have regard to ...

(c) The likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person;

(f) the relationship which the child has with relatives and with any other person in relation to whom the court or agency considers the relationship to be relevant, including –

(i) the likelihood of any such relationship continuing and the value to the child of it doing so,

(ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of the child's relatives, or of any such person, regarding the child.

- There remains in Wales (but not in England) the following:

(5) In placing the child for adoption, the adoption agency must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

The CA held that the court should have used the ACA extended checklist for both care plan options (reunification and adoption); the ACA principles must be used in considering all of the options where one of the options is adoption.

The CA also confirmed the need to look at both of these options, side by side, with a proper welfare analysis. However unrealistic a 'realistic' option may appear, it comes down to that old principle of 'showing your workings out' in that final welfare analysis, using the extended ACA principles and welfare checklist whenever adoption is one of those options.



Welsh Early Permanence: A Framework for Practice

We have made reference to this framework in previous bulletins. We are now pleased to announce that the Welsh Early Permanence framework that AFA Cymru developed on behalf of the National Adoption Service was launched, following wide consultation across the sector, at a very successful NAS national conference in May.

We are aware of the pressures and challenges facing children's services at the moment, particularly in frontline social work. The framework aims to provide clarity and support so that we can start to develop this framework that is so important for children and can cut down on the numbers of transitions they experience in the journey through care.

We know how critical early stability and security is for a child. Early Permanence provides a child with a secure base as early as possible, when weeks and months really do matter; it enables healthy brain development and attachment through safe, predictable relationships with sensitive adults, and minimises the distressing moves that cause further trauma.

The framework

1. Introduction and Legal Framework
2. WEP Care Planning for the Child
3. WEP Child Referral
4. WEP Matching
5. WEP Placement
6. Recruitment, Preparation,
Assessment and Approval of Prospective Adopters
7. Preparation, Assessment and Approval of WEP carers
8. Information for, and work with, parents
9. Child's return to parents or wider family
10. Following Placement Order decision

Each chapter provides detailed information about what needs to happen and there is a quick reference "Allocation of Roles" document in Chapter 2 which clearly sets out the different practitioner roles and responsibilities at each stage.

There are a number of specifically developed WEP templates/ proformas for practitioners to use. These include: WEP Child Referral form; WEP Matching framework document and Matching certificate; WEP Delegated Authority Agreement, Foster Carer Agreement and Placement Plan; WEP Addendum report for fostering panel; WEP Review templates. Guides have been developed for adoption and fostering social workers advising on the additional elements to be considered and included in the PAR and WEP Addendum report.

There is written information available for websites, prospective WEP applicants, parents, and parents' legal representatives.

All materials are available to access and download on the NAS website.

[Gaziantep Mabwysiadu Cenedlaethol - Sefydlogrwydd Cynnar Cymru \(adoptcymru.com\)](http://adoptcymru.com)

[National Adoption Service - Welsh Early Permanence Framework \(adoptcymru.com\)](http://adoptcymru.com)

Implementation plan

We are currently in the middle of delivering a series of live webinar events with the purpose of familiarising practitioners with the WEP framework and implications for practice. 2 events are being offered per adoption region between mid May – end July, with no limit on numbers.

These events will be relevant to child care, fostering, adoption, IRO, CAFCASS, panel members, Reflect, Medical Advisors, contact workers, and we would really appreciate any support with engagement.

AFA Cymru will also be liaising with the local Family Justice Boards and Family Justice Network between June – Sept 2022 to ensure they are familiar with the new framework and practice developments across Wales that bring it into line with other areas of the UK regarding Early Permanence.

Recorded e modules

Short recorded modules on the key principles and practice implications of WEP are currently in the process of being developed and produced for:

- **Practitioners** – suitable for adoption, fostering, child care social workers; Cafcass Cymru and LA solicitors; IROs; medical advisors; contact workers; and any other relevant professionals involved.
This will be available to access as a download from the NAS website from end September 2022.
- **Adoption and Fostering Panel members/ ADMs/ DMs.**
This will be available to access as a download from the NAS website from end September 2022.
- **Judiciary** – to supplement the sharing of information at each Local Family Justice Board and the Wales Family Justice Network.
This will be available to access as a download from the NAS website by the end of 2022.
- **Family and Friends** – specific to WEP to supplement existing training in place in the region/ VAA.

This will be available to access as a download from the NAS website by the end of 2022.

Recorded module for parents

A short animated module which provides introductory information on what Welsh Early Permanence is, what it means for children and for them will be available as a download from the NAS website from January 2023.

Live webinars accessible across Wales

Within the framework, there are 2 live webinars scheduled for delivery to prospective applicants:

1. **1 short day “Is WEP right for you?”** – interested applicants can be referred to this in the latter stages of Stage 1 (after accessing the regional Preparation to Adopt training) or in the earlier stages of Stage 2.
This will be delivered AFA Cymru 6 times over a twelve month period and will commence late Autumn 2022.
2. **1 day Fostering training** which specifically focuses on the status and priorities of a WEP placement. If applicants remain interested after attending “Is WEP right for you?” they can be referred this training in the latter stages of Stage 1 or in the earlier stages of Stage 2 of the applicant/s adoption assessment.
This will be delivered by AFA Cymru 5 times over a twelve month period and will commence late Autumn/ early Winter 2022.

Mainstream foster carers wishing to adopt the child placed with them or applying for a special guardianship order

This is an increasingly common practice, requiring child care social workers, fostering teams and adoption regions to work together to identify what is the best care plan for child.

NAS has just completed the draft of a guidance note on foster carers’ adopting and will be sharing it with fostering colleagues in the near future to agree a way forward. We will revisit this developing area in future bulletins.

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